



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENDER STREET HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNR, MNSD, MNDC, FF.*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order pursuant to Section 67 for loss of income, liquidated damages, cost of cleaning and the filing fee. The landlord also applied to retain the security and pet deposits in satisfaction of his claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

At the start of the tenancy, it was determined that the tenant had stopped payment on the security and pet deposits and therefore the landlord was not holding any deposits.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages, cleaning, and the filing fee?

Background and Evidence

On October 16, 2015, the parties entered into a fixed term tenancy agreement with an effective start date of October 19, 2015 and an end date of October 31, 2016. The rent was set at \$1,650.00 due on the first of each month. The tenant paid security and pet deposits which he stopped payment on. The landlord filed a copy of the tenancy agreement. The rent does not include utilities.

On October 20, 2015, the tenant informed the landlord that she was not going to be moving into the rental unit. The landlord used the services of a leasing agent who started advertising the availability of the unit and showing the unit.

A new tenant was found for November 16, 2015. The landlord has applied for a monetary order for the loss of income that he suffered for the period of October 19 to November 16, 2015, for the cost of finding a new tenant, for the cost of hydro, cleaning and mowing the lawn.

Analysis

Based on these facts and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement when they signed a contract on October 16, 2015.

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate his losses by advertising the availability of the suite but did not find a tenant until November 16, 2015 and therefore suffered a loss of income for the period of October 19 to November 16, 2015.

Residential Tenancy Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that he lost for the period of October 19 to November 16, 2015 which works out to \$1,543.50.

I further find that the landlord has provided evidence to support his claim for the cost of hydro for this period in the amount of \$15.75.

The tenancy agreement does not have a liquidated damages clause and accordingly I dismiss the landlord's claim of \$700.00 for the cost of finding a new tenant. I also dismiss the landlord's claim for the cost of cleaning and cutting the grass.

Since the landlord has proven a portion of his application, I award him the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim of \$1,543.50 for loss of income, \$15.75 for hydro and \$50.00 for the filing fee for a total claim of 1,609.25.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,609.25**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 28, 2016

Residential Tenancy Branch

